

Remarks

With entry of this amendment, claims 1-4, 7-16, and 19-20 are pending in the application with claims 1 and 20 being independent claims. By the foregoing amendment, claims 1, 2, 12, 14, and 20 are sought to be amended and claims 5-6 and 17-18 are sought to be canceled. These changes are believed not to introduce new matter and their entry is respectfully requested. The applicant requests that the Examiner contact his attorney of record to arrange a telephone interview to discuss the outstanding office action and applicant's response thereto when the Examiner reviews this Response.

Rejection under 35 U.S.C. § 112, ¶ 2

Claims 1-20 stand rejected under 35 U.S.C. § 112, ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, it is asserted in the Office Action that it is not clear as to whether the apparatus is being claimed in combination with a tree stand or just for use with a tree stand. It is further asserted in the Office Action that there is no antecedent basis for the "tree stand" recited in claims 2 and 3.

In response, Applicant has amended the claims to clarify that the apparatus of the invention is being claimed for use with a tree stand and not in combination with a tree stand. Applicant also has amended the claims such that it is "a" tree stand rather than "the" tree stand,

thereby eliminating the need for an antecedent basis when applicant refers to a tree stand. Applicant respectfully submits that the amendments to the claims render the 112 paragraph 2 rejection moot, and applicant therefore respectfully requests that the rejection be withdrawn.

Rejection under 35 U.S.C. § 102(b)

Claims 1 and 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,230,689 (Kemp). Applicant's invention as claimed in amended **claim 1** includes as a claim element "a fastener [on its closed end] for securing the apparatus to a base of a tree stand." Kemp does not teach or disclose any fastener on the closed end of its warming bag, let alone one for securing the warming bag to a base of a tree stand. Kemp therefore does not anticipate claim 1. *See* MPEP 706.02 (for anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed invention).

Applicant's invention as claimed in amended **claim 20** includes as an element the step of "inserting one or both feet and legs into a generally tubular length of material having an open end and a closed end, **wherein said closed end is secured to a base of a tree stand by a fastener.**" As discussed above, Kemp does not teach or disclose a fastener on the closed end of its warming bag. Kemp therefore does not anticipate claim 2. *See* MPEP 706.02 (for anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed invention).

The Office Action justifies its rejection of claims 1 and 20 in light of Kemp by referring to cord 8 in Kemp as the fastener recited by applicant. Upon a closer examination of Kemp, it is apparent that cord 8 not only is not a fastener on the closed end of the warming bag, but it also does not serve the function of securing the warming bag to a base of a tree stand. Instead, cord 8 is situated near the open end of the warming bag in Kemp (see Fig. 4), and it functions to hold the warming bag together when bundled (see col. 2 lines 1-6; col. 3 lines 11-29).

As discussed above Kemp does not teach or disclose a fastener on the closed end of the apparatus for securing the apparatus to a base of a tree stand. Kemp therefore does not teach or disclose all aspects of applicants invention as claimed in claims 1 and 20 as required for anticipation. Applicant respectfully submits that amended claims 1 and 20 are in condition for allowance. Withdrawal of the 102 rejection of claims 1 and 20 is respectfully requested.

Rejection under 35 U.S.C. § 103

Claims 2-6 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kemp in view of U.S. Patent No. 6,539,966 (Raines).

Claims 7-9, 12, and 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kemp in view of U.S. Patent No. 1,915,044 (Anderson).

Claims 14-18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kemp in view of Anderson and further in view of Raines.

Claims 10-11, and 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kemp in view of U.S. Patent No. 5,630,439 (Hutto).

By the foregoing amendments, claims 5-6 and 17-18 were canceled, thereby rendering the rejection of those claims moot. Regarding the remaining claims, **claims 3-4, 7-16, and 19** all depend either directly or indirectly from independent claim 1 which, as discussed above, includes as an element a fastener on the closed end of the apparatus for securing the apparatus to a base of a tree stand. Thus, in order to establish a prima case of obviousness, the prior art references when combined must teach or suggest all of the claim limitations including *a fastener for securing the apparatus to a base of a tree stand*. See MPEP 706.02(j) (the prior art reference (or references when combined) must teach or suggest all the claim limitations).

As discussed above, Kemp does not teach a fastener for securing its warming bag to a base of a tree stand. Likewise, none of the other references cited, i.e., Raines, Anderson, or Hutto, teach or disclose a fastener for securing applicant's apparatus to a base of a tree stand. The combination of Kemp plus any of the other references thus cannot teach or disclose all of the limitations as claimed in claims 3-4, 7-16, and 19 and a prima facie case of obviousness has not been established. Applicant respectfully requests withdrawal of the 103 rejection of claims 3-4, 7-16, and 19.

Additionally, applicant respectfully submits that since claim 1 is in condition for allowance, claims 3-4, 7-16, and 19, which are necessarily narrower in scope than claim 1, also

are in condition for allowance. It is well established in the patent law “that allowance of a parent or base claim as patentable normally results in allowance of a claim dependent upon that claim.” See DONALD S. CHISUM, CHISUM ON PATENTS § 7.04[2]; *U.S. v. Telectronics, Inc.*, 658 F. Supp. 579, 591, 3 USPQ2d 1571, 1580 (D. Colo. 1987), *aff’d in part and rev’d in part*, 857 F.2d 778, 8 USPQ2d 1217 (Fed. Cir. 1988), *cert. denied*, 109 S. Ct. 1954 (1989)(“Since it would not have been obvious to have made the invention defined in claim 1, ... it would not have been obvious to make the inventions defined in dependent claims 3, 4 and 5.”); *In re Fine*, 837 F.2d 1071, 1076, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988)(“Dependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious.”).

Since claim 1 was not anticipated by either Kemp, Anderson, Raines, or Hutto, claims 3-4, 7-16, and 19 likewise are not anticipated. Applicant respectfully requests withdrawal of the rejection of these claims.

Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicant believes that a full and complete response has been made to the outstanding Office

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Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,

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